TIRKs?

A. No, that's again for proprietary reasons. There's a lot of customer-specific information that's located in there. So, it's not part of the CLEC list, it's not part of the way we've done dark fiber in New York or Massachusetts or Pennsylvania or in Virginia.

Q. But you testified that the way you did dark fiber in Massachusetts involved -- you had an arbitration with AT&T, and out of that grew the wire center maps, right, that you made available to other CLECs?

A. Yes. I mean, I guess every product that we offer you probably could say evolves over time through the natural process of interconnection agreement negotiations and arbitrations that occur.

Q. And there was evolution in Pennsylvania where you arbitrated with Cavalier and came up with parallel processing so that they could proceed with their collocation requests at the same time work was being done on the request for dark fiber, right?

A. Almost. That wasn't an arbitration. The place where we first ran into that expression of need from Cavalier was in Pennsylvania. It was occurring at the same time, basically, that the 271 hearings were going on. And as a result of, you know, working with them as a customer in Pennsylvania, we were able to develop some of the processes and procedures to create that offering to meet the need that they had.

Q. And I believe I heard you testify today you're willing to work with individual CLECs that have cross-examined you on meeting their needs for interconnection or for access to dark fiber in terms of giving them maps of your facilities in specific locations.

A. Well, giving them additional information that will help them, sure.

Q. You're willing to do that?

A. Well, we're willing with all carriers, and with all customers, to try and, you know, mutually work to meet any additional needs that they have.

Now, that doesn't mean that we meet all needs expressed by all people, but we certainly, you know, try and work with our customers and develop ones that we can and develop ones that we're required to do.

Q. Okay.

A. And develop ones that we're also not required to do.

Q. Okay. Let me go to termination of dark fiber. I've heard that it has to be terminated one of three ways, in a vault, in a hut, or in the customer premises.

If it's terminated in a hut, does this require collocation arrangements for the CLEC to have access to that dark fiber?

A. (Shockett) Yes, it does.

Q. So, would they have need to pursue the collocation application, assuming time is of the essence? It would be to their advantage to pursue this parallel processing than if it's determined that you have dark fiber terminated at a hut?

A. If they each collocated the hut and they don't have any collocation facilities, the parallel provisioning process would certainly shorten the time frame to order the dark fiber.

Q. Do huts in Virginia have any collocation facilities?

A. I don't know that.

Q. Okay. Do the CLECs know that they have to collocate the hut?

A. Well, it is described in the interconnection agreements under dark fiber subloop. The access to dark fiber subloop does require collocation.

Q. So, whether it's in the customer premises or the vault or the huts, there has to be a separate collocation application made, if there's not a presence by that CLEC in one of those three places?

A. At the customer premises, they don't have to collocate. These have to have a presence at that --

Q. Oh, I'm sorry, POP, yeah.

So, we're talking about requirements that go beyond simply having hard terminations that can be connected and reconnected; we have other requirements associated with collocation provisions, right?

A. That's correct.

Q. All right. Does anyone on the panel have an idea of how many miles of dark fiber are in the ground in Virginia that's not terminated?

A. (Albert) No.

Q. Okay. At any given point in time, you don't have a sense of what your inventory is of work in progress, if you will, with dark fiber?

A. I mean, through a probably fairly lengthy annually intensive special study, you could come up with that.

What you could come up with quickly is the number of facilities that are complete and finished end to end between termination points, but really to go back to all of the individual cable plats and construction records and to try to pull off of those the cables that are partially built and not terminated, that's a pretty massive and manual labor-intensive effort to do that.

Q. Well, I don't want to get into proprietary information, but I'm trying to get a handle on what's the size of this issue here.

Mr. Albert, you've testified that these unterminated dark fiber cables are booked in the property logs -- I'm sorry. Just a second. Detailed continuing property records.

A. No, what I basically said is my knowledge and understanding of property records is that's where the investment of our plant goes to. The particular accounting that's used to get it there and to get it to different accounts and at what point in time dollars associated with fiber facilities get into those different accounts I am not firsthandedly familiar with that.

Q. So, does anybody on the panel know what particular accounting treatment is given to dark fiber that's not terminated, that's in the ground or hanging on aerial?

A. (Shockett) I don't know that, either.

Q. Ms. Shockett, you said it's not Verizon's policy to put this dark fiber in the ground and then leave it for years before terminating?

A. That's correct. Putting it in the ground because we've got a plan that we need additional capacity, and we're going to complete that work.

Q. All right. And you're not going to terminate it until you have a customer for that dark fiber, right?

A. No. We would have a job that looks at an overall need, capacity, in a particular area, and we would set up the requirements for that job, and it would be a long-term plan, and we would develop the -- you know, we would buy the fiber. We develop a plan to get the fiber laid in the street, and then finally terminate it at wherever it is that it terminates.

Q. So, do you provide terminations on this dark fiber without having a customer connected, essentially, at the same time?

A. We could, yes.

Q. Well, that's speculative. As a matter of practice is that your practice to do that?

A. (Albert) I'd say more often yes. More often what's triggering the placement of our fiber facilities really is a general -- twofold; a modernization of serving the technologies that we currently have in place, as well as the placement of additional capacity for future orders.

And, so, most times when we'll put in new fibers and new fiber-optic systems we'll be taking existing customer services off of their current methodologies and placing them onto the electronics and onto the fiber.

Usually, it's this aggregate collection of customer needs, not an individual service order, not an individual customer request. You know, it's really more the long-term macro efficient modernization of the network which is driving our planning and driving our placement of fiber-optic facilities.

MR. MUELLER: I have no further questions. Thank you.

HEARING EXAMINER: I have no questions of this panel. Any redirect?

MR. SMITH: No, we do not have any redirect.

HEARING EXAMINER: Thank you. The panel may be excused.

And we'll get through the next one.

* * * * *

B

COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

IN THE MATTER OF

Verizon Virginia Inc.'s compliance with the conditions set forth in 47 U.S.C. § 271(c)

CASE NO. PUC-2002-00046

BRIEF OF OPENBAND OF VIRGINIA, L.L.C.

OpenBand of Virginia, L.L.C. ("OpenBand") hereby submits its post-hearing brief in the above-referenced proceeding. As set forth further below, the Commission should ensure that Verizon's interoffice transport and UNE combinations offerings provide CLECs with full and fair access to these facilities and services. In addition, the Commission should modify Verizon's dark fiber proposals because they are not consistent with law and do not offer CLECs in Virginia a meaningful opportunity to compete.

Introduction

The heart of OpenBand's interest and position in this proceeding has already been provided to the Commission through the direct, written testimony of Robert W. Walker.[1] In short, OpenBand is a facilities-based, converged communications services provider in Virginia. One of OpenBand's primary activities in Virginia is designing, installing, and operating state-of-the-art, "last mile" broadband networks at residential communities called "smart neighborhoods" or "wired communities." In order to connect these advanced, fiber-based networks to each other and to the outside world (i.e., national and

[1] *See* Testimony of Robert W. Walker on Behalf of OpenBand of Virginia, LLC (filed May 3, 2002) ("Walker Testimony").

international networks), OpenBand must, at times, rely on Verizon and its nearly ubiquitous network in Virginia.

As explained in Mr. Walker's testimony, three primary Verizon offerings are involved in the connection and coordination of OpenBand's wired communities: (1) interoffice transport; (2) UNE combinations; and (3) dark fiber.

With regard to unbundled interoffice transport and UNE combinations, OpenBand simply encourages the Commission to ensure that Verizon proposals afford CLECs full and fair access to these facilities and services. For example, the Commission should ensure that access to interoffice transport should be without any restriction (e.g., capacity) that would destroy or even impair opportunities or incentives for providers (like OpenBand) to extend innovative broadband, bundled, and converged service capabilities to Virginia residential consumers. Similarly, the Commission should ensure that Verizon has submitted proposals and committed to offer UNE combinations to the full measure required by FCC combination rules – all of which have now been affirmed by the Supreme Court of the United States.[2]

With regard to unbundled dark fiber, OpenBand also encourages the Commission to ensure full and fair access. To do so, however, OpenBand maintains that the Commission must address and eliminate two patent and specific barriers to competition in Verizon's current proposals.

The first of these barriers is a Verizon requirement that unused fiber must be "terminated" before Verizon will make it available as dark fiber. As Mr. Walker detailed in his testimony, this requirement has no rational basis in the FCC's definition of dark fiber and, indeed, would essentially allow Verizon to avoid any obligation to make unused fiber available to CLECs by terminating otherwise installed fiber only when Verizon needs to use it.[3]

The second Verizon dark fiber barrier is the inefficiency and inadequacy of Verizon's process for providing information about the dark fiber in its network. As Mr. Walker detailed in his testimony, Verizon's route-specific dark fiber inquiry process relegates CLECs to a virtual shell game in trying to locate dark fiber in Verizon's network.[4] Where Verizon has ready access to the location, capacity, and availability of unused fiber routes, CLECs like OpenBand cannot reasonably compete in the face of a process built on guesswork, Verizon-filtered information, and open-ended response time and cost commitments.

To remedy these dark fiber problems, OpenBand has proposed that the Commission simply follow the lead of other state commissions who have addressed the same anti-competitive proposals. As explained in Mr. Walker's testimony, the Texas commission has specifically rejected "termination" as a requirement for the availability of dark fiber.[5] The Massachusetts commission adopted this finding in a different way by requiring Verizon to provide access to dark fiber splice points.[6] Similarly, in express recognition of the problems inherent in a route-specific dark fiber inquiry process, the Texas commission has granted to CLECs, subject to appropriate confidentiality agreements, direct access to the same plant records and TIRKS system information that is available to an ILEC for locating and

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2 Among other things, the Commission should ensure that Verizon's extended and burdensome BFR process is reserved for UNE combinations that truly deserve special consideration (i.e., combinations that are truly extraordinary, not routine or patently simple connections).

3 *See* Walker Testimony at ¶¶ 12-19.

4 *See* Walker Testimony at ¶¶ 20-25.

5 *See* Walker Testimony at ¶¶ 16-19.

6 *See* Attachment C at Section 17.1.1(D).

evaluating the availability of dark fiber.[7] The Maine commission also rejected Verizon's currently proposed hit-or-miss process, requiring detailed dark fiber information reporting and other procedures designed to facilitate CLEC access to dark fiber information.[8]

OpenBand has attached the dark fiber provisions adopted by the Texas, Maine, and Massachusetts commissions for the Commission's consideration.[9] As provided below, Verizon has offered no valid basis why Virginia competitors and consumers deserve anything less than the protections and opportunities that these provisions offer.

Argument

I. Virginia-Specific Experience

Verizon argues in this proceeding for the Commission to discount OpenBand's dark fiber complaints because OpenBand does not have any Virginia-specific experience with its Virginia dark fiber offerings (i.e., OpenBand has not ordered any Verizon dark fiber in Virginia).[10] Verizon, however, has not identified anything that makes Virginia-specific dark fiber experience relevant.

The problems and inefficiencies of Verizon's dark fiber proposals are evident on their face. It does not take experience to recognize that with a termination requirement for dark fiber, Verizon is armed with both the opportunity and incentive to deny competitors access to valuable fiber capacity that (with only marginal work) is otherwise at Verizon's beck and call. Likewise, it does not take experience to see the inherent differential between the quality and timing of Verizon's access to dark

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7 *See* Attachment A at 116-123.

8 *See* Attachment B at Section 2.1; *see also* Attachment B, Dinan Letter at ¶ 4.

9 Relevant excerpts from the Texas commission's order are provided as **Attachment A**. Verizon's relevant dark fiber requirements in Maine are reflected in a letter from Mr. Edward Dinan, President of Verizon Maine and Verizon's newly proposed Maine Tariff No. 20, Part B, Section 2. Both of these documents are provided as **Attachment B**. Verizon's relevant dark fiber requirements for Massachusetts are reflected in its Massachusetts Tariff No. 17, Part B, Section 17, a copy of which is provided as **Attachment C**.

fiber information and the access that Verizon is now proposing to provide Virginia CLECs. Indeed, in an analogous situation in the *UNE Remand Order*, the FCC did not require any "war stories" or experience to determine that it was inherently anticompetitive for ILECs to relegate CLECs to second-hand access to loop qualification information instead of the same direct access to underlying network records that the ILECs themselves enjoy.[11]

Simply put, the fact that OpenBand has not yet been denied access to un-terminated dark fiber or undertaken the prohibitive guesswork and delay of Verizon's dark fiber request process does not mean that these proposals are not real barriers to competition in Virginia.[12]

II. Applicability of Dark Fiber Requirements From Other States

Verizon also argues in this proceeding that the Commission should not look to the dark fiber requirements of Texas or Maine, but settle for Verizon's current proposals because they were good enough for the FCC in Pennsylvania.[13] Verizon's argument is without merit.

The fact that the FCC approved Verizon's current dark fiber proposals for Pennsylvania does not mean that the Commission must (or even should) rubber stamp those proposals. Just as the FCC has accepted the Pennsylvania commission's recommendations on Verizon's dark fiber offerings in Pennsylvania, it has also accepted very different recommendations from Maine and a number of other Verizon states.

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10 *See* Reply Checklist Declaration on Behalf of Verizon Virginia, Inc. at ¶ 146.

11 *See In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order, CC Docket No. 96-98, FCC 99-238, ¶¶ 426-431 (rel'd Nov. 5, 1999) ("*UNE Remand Order*").

12 Notably, OpenBand does have experience with Verizon dark fiber offerings in the District of Columbia. Moreover, OpenBand's consultant and primary witness in this proceeding, Mr. Walker, is very familiar with the effects of similar requirements through his work with other competitive carriers.

13 *See* Reply Checklist Declaration on Behalf of Verizon Virginia, Inc. at ¶¶ 146-147.

In short, the Commission does not need to adopt for Virginia what is, in essence, the least common denominator of Verizon's dark fiber offerings. And, indeed, it should not. That Pennsylvania's dark fiber requirements were enough for the FCC does not in any way mean that the barriers raised by OpenBand here (and tackled by Texas, Maine, and Massachusetts) are any less valid or real for competitors and consumers in Virginia. Like these other states, the Commission can and, indeed, should recognize and remedy these inherent problems in Verizon's current dark fiber proposals.

III. Interconnection Negotiation

Verizon also argues in this proceeding that OpenBand's dark fiber concerns are more appropriately raised in interconnection negotiation and should not be addressed in the context of this proceeding.[14] This argument, too, does not have merit.

First, other state commissions have addressed and resolved the same issues in the context of their review of ILEC 271 applications.[15] Verizon was a party to a number of these proceeding and accepted the state commissions' consideration and resolution of the issues in that context.

Second, Verizon's argument, if true, could conceivably be extended to almost every other issue in this proceeding. Yet, unlike OpenBand's dark fiber concerns, Verizon does not seem to object to the resolution of these other issues in this proceeding.

Third, if the Commission were to defer OpenBand's dark fiber concerns to be resolved in interconnection negotiations, it would essentially just be delaying resolution of the issue in an arbitration proceeding. Such a proceeding would needlessly duplicate the expenditure of resources that has already been devoted to the resolution of these issues in this proceeding and would ultimately just allow

14 *See* Reply Checklist Declaration on Behalf of Verizon Virginia, Inc. at ¶ 148.

15 *See, e.g.*, Attachment B, Dinan Letter at ¶ 4.

Verizon to maintain obvious competitive barriers in Virginia for that much longer. Indeed, in light of the fact that arbitration is not available to CLECs in Virginia, the Commission would essentially forfeit any opportunity to address this very important competitive issue. OpenBand's concerns about Verizon's current dark fiber offerings are properly within the Commission's consideration in this proceeding.

IV. Dark Fiber Termination

Verizon has also argued in this proceeding that the FCC's definition of dark fiber requires termination of the facility.[16] Verizon is, again, wrong.

First, the same argument that Verizon makes here was presented squarely to the Texas commission just last year. The Texas commission rejected Verizon's argument outright. While the Commission is not necessarily required to follow the Texas commission's ruling, that fact does not make the Texas commission's findings any less valid or instructive. Where FCC regulations do not expressly condition the availability of dark fiber on termination, it simply does not make any sense to infer such a limitation where to do so would create an exception that effectively swallows the rule. In short, if the Commission were to accept such an interpretation, the Commission would be giving Verizon the power to insulate its entire inventory of unused fiber in Virginia from its competitors by leaving it un-terminated. That is clearly not what the FCC intended.

Second, even if (for the sake of argument) the FCC's definition of dark fiber does not contemplate un-terminated fiber, the Commission is not limited to this definition. Under the express provisions of the Telecommunications Act of 1996, the Commission has independent authority to go

16 *See* Reply Checklist Declaration on Behalf of Verizon Virginia, Inc. at ¶¶ 157-159.

beyond FCC requirements where the interests of competition call for it to do so.[17] Accordingly, even if the FCC somehow did not contemplate the gaping loophole that Verizon now proposes to impose on its dark fiber requirements, the Commission has ample authority to follow Texas and close that loophole in this proceeding.

V. Dark Fiber Inventory

Verizon also argues in this proceeding that un-terminated dark fiber is not inventoried in Verizon's Virginia systems.[18] Verizon's argument is a red herring. Verizon's dark fiber obligations do not turn on whether or not it has inventoried the facilities in a particular system or database. Rather, its obligations turn simply on whether the facilities exist. At the hearing, Verizon admitted that it keeps records (i.e., cable plats) of existing, un-terminated fiber plant in its network. While Verizon may choose, despite these records, to categorize these facilities as un-inventoried plant, this choice does not make the facilities disappear, nor change Verizon's legal obligations with regard to the facilities.

VI. Work Involved in Terminating Dark Fiber

Finally, Verizon argues in this proceeding that the termination of dark fiber does not involve marginal effort, but in many cases requires substantial additional construction (including, potentially, placing miles of additional cable, obtaining additional rights-of-way, building conduit, and building pole lines).[19] Verizon's argument is confused.

As an initial matter, the heart of the issue presented by OpenBand in this proceeding is not entirely about the logistics involved in terminating dark fiber. The issue is about a CLEC's right to access dark fiber that is not terminated. This access can be accomplished with or without a hard

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[17] *See* 47 U.S.C. § 251(d)(3) (preserving state commission authority to impose requirements beyond the specific requirements of the Act and FCC rules).

termination point as the Massachusetts commission determined and required in approving Verizon's 271 application for that state.[20] The degree of difficulty and additional construction required of Verizon, therefore, is not really determinative of the issue that is now before the Commission.

Notwithstanding, even in the case of the Texas decision requiring ILEC termination of dark fiber upon request, Verizon misinterprets termination to mean not only the simple connection of fiber to a fiber panel located where the fiber currently ends, but the extension of fiber to distant locations beyond where the fiber currently ends. In other words, by requiring termination, the Texas commission was simply creating a mechanism for CLECs to access dark fiber where it lies, not to build miles of fiber beyond that point to provide access at a completely different location. Verizon has offered nothing in this proceeding to contradict the Texas commission's conclusion that the termination of fiber where it lies does not involve substantial construction.[21]

Conclusion

OpenBand believes that the promising competitive area of "smart neighborhoods" or "wired communities" will significantly and particularly benefit from the availability of transport and fiber options. Wired community providers install the extensive and expensive infrastructure to wire the last mile and provide true broadband solutions, offering perhaps the best hope of increasing the number of residential broadband subscribers. The Commission should ensure that Verizon's provision of access to critical unbundled facilities facilitates and fosters this model by offering to providers like OpenBand ready access to interoffice transport, UNE combinations, and dark fiber. Indeed, in the case of dark fiber

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18 *See* Reply Checklist Declaration on Behalf of Verizon Virginia, Inc. at ¶ 159.

19 *See* Reply Checklist Declaration on Behalf of Verizon Virginia, Inc. at ¶ 159.

20 *See* Attachment C at Section 17.1.1(D).

21 The fact that terminated and un-terminated fiber strands reside within the same cable sheath further undermines the credibility of Verizon's argument that un-terminated fiber would be difficult and costly to terminate.

specifically, the Commission should eliminate patently anticompetitive Verizon proposals restricting dark fiber availability based on termination and restricting the availability of dark fiber information through a cumbersome, ineffective, and dilatory information sharing process. For these issues, OpenBand encourages the Commission to follow the lead of the Texas, Massachusetts, and Maine commissions, who each have adopted pro-competitive and reasonable solutions to these problems, including, but not limited to, required termination of dark fiber, access to dark fiber at splice points, direct access to cable plats and TIRKs information (subject to confidentiality agreements), and detailed dark fiber reporting and information sharing.

In this proceeding, the Commission has a unique opportunity to create a competitive environment in Virginia that does not simply match the least that Verizon has to offer in its other states. Instead, it can draw from the experience and findings of other states, as well as its own experience and expertise, to foster a truly robust and competitive market in Virginia as Congress contemplated in creating the Act and the 271 checklist process. OpenBand encourages the Commission to do in this proceeding.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was delivered via e-mail, hand-delivered, or mailed, first-class postage prepaid on this 1st day of July, 2002, to the following:

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Richard Davis

ATTACHMENT A

C

SCC-62

0208 2 0121

COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

IN THE MATTER OF

VERIZON VIRGINIA, INC. **CASE NO. PUC-2002-00046**

To verify compliance with the conditions set forth in 47 U.S.C. § 271(c)

HEARING EXAMINER'S RULING

August 15, 2002

On July 12, 2002, the Hearing Examiner issued his Report in this matter.

On July 19, 2002, WorldCom, Inc. ("WorldCom") filed a Motion to Reopen the Record to incorporate the FCC's decision in the non-cost portion of the WorldCom/Verizon Virginia, Inc. ("Verizon") arbitration proceeding.[1] Specifically, WorldCom requested that: (i) Verizon be required to either amend its § 271 application filed with the Commission to comply with the *FCC Arbitration Decision* or indicate that it intends to appeal; (ii) parties be afforded an opportunity to respond to Verizon's filing; and (iii) the Hearing Examiner be given an opportunity to revise his Report to the Commission.[2]

On July 22, 2002, Cavalier Telephone, LLC ("Cavalier") filed a Motion to Reopen the Record, in which it incorporated and adopted the reasons advanced by WorldCom.[3] On July 23, 2002, AT&T Communications of Virginia, LLC ("AT&T") filed a Response and Motion in support of the motions to reopen the record made by WorldCom and Cavalier. AT&T argued that Verizon should be required to demonstrate that it has complied with the *FCC Arbitration Decision*, or alternatively, that it intends to appeal that decision.[4] In addition, AT&T urged the Commission to require Verizon to make the same showing in response to the FCC's pricing arbitration when the FCC issues that decision.[5]

On July 24, 2002, Verizon filed a response to the motions to reopen the record of WorldCom, Cavalier, and AT&T. Verizon offered four arguments against reopening the record. First, Verizon asserted that it has demonstrated that its practices and processes are the same as those used in other states that have already been granted § 271 approval.[6] Second, Verizon maintained that the only rules and obligations relevant for § 271 purposes are those in place at

[1] *In the Matter of Petition of WorldCom, Inc. pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia, Inc. and for Expanded Arbitration*, Memorandum Opinion and Order, CC Docket No. 00-218 (Released July 17, 2002) ("*FCC Arbitration Decision*").

[2] WorldCom Motion to Reopen the Record at 3.

[3] Cavalier Motion to Reopen the Record at 1.

[4] AT&T Response and Motion at 1.

[5] *Id.* at 2-3.

[6] Verizon Response at 2.

the time Verizon filed its application with the Commission.[7] Third, Verizon argued that the FCC has determined that a BOC does not have to demonstrate compliance with rules that have yet to take effect, and that the *FCC Arbitration Decision* is not final.[8] Finally, Verizon contended that any § 271 issues related to the *FCC Arbitration Decision* should be raised before the FCC.[9]

On July 25, 2002, AT&T filed a reply to Verizon's response in which it claimed to seek only a demonstration of Verizon's compliance with the *FCC Arbitration Decision* or notification that it intends to appeal.[10] Nonetheless, AT&T alleged that if Verizon fails to comply with the *FCC Arbitration Decision* until it has exhausted all of its rights to appeal, then it will be "quite some time before Verizon[] will be compliant with . . . aspects of the competitive checklist."[11] Furthermore, AT&T submitted that the *FCC Arbitration Decision* is not a new rule, but is an application of the FCC's current rules.[12] Thus, AT&T argued that the *FCC Arbitration Decision* leads to the conclusion that Verizon is not meeting the checklist requirements under existing rules.[13] Finally, AT&T contended that this Commission must consider the *FCC Arbitration Decision* before it can fulfill its role in the § 271 process.[14]

On July 29, 2002, WorldCom filed a letter in reply to Verizon's response. WorldCom averred that its motion to reopen was not an attempt to delay and accused Verizon of delaying the arbitration case before the FCC.[15] WorldCom maintained that standards applied in the *FCC Arbitration Decision* are the same standards that should be applied in Verizon's § 271 proceeding.[16] In addition, WorldCom asserted that in determining what rules apply, the "time of filing" refers to the filing at the FCC.[17] Therefore, WorldCom warned that if the Commission's consultative report fails to consider the *FCC Arbitration Decision* and the FCC reviews Verizon's § 271 filing with the benefit of the *FCC Arbitration Decision*, "[t]hat would render this Commission's consultative report to the FCC incomplete and conceivably irrelevant on certain issues."[18]

On August 1, 2002, Verizon filed its application with the FCC in which it seeks § 271 authority for Virginia. Also, on August 1, 2002, the Commission submitted a letter, along with the Hearing Examiner's Report, to the FCC as this Commission's consultative report to be used by the FCC in Verizon's § 271 application.

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[7] *Id.* at 2-3.
[8] *Id.* at 4.
[9] *Id.* at 4-5.
[10] AT&T Reply at 1-2.
[11] *Id.* at 2.
[12] *Id.* at 2-3.
[13] *Id.* at 3.
[14] *Id.* at 3-4.
[15] WorldCom Reply at 2.
[16] *Id.* at 3.
[17] *Id.*
[18] *Id.* at 3-4.